

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
Larry MCNAIR,

Plaintiff,

12 Civ. 7055 (ALC) (SN)

- against -

ORDER ADOPTING REPORT
AND RECOMMENDATION

Warden Louis RIVERA, et al.,

Defendants.
-----X

ANDREW L. CARTER, JR., United States District Judge:

This matter was referred to Magistrate Judge Sarah Netburn pursuant to Orders dated February 6, 2013 and April 12, 2013. Magistrate Judge Netburn issued a Report and Recommendation ("R&R") on August 5, 2013, recommending pro se Plaintiffs Fernando Lopez and Chason Alston be dismissed from this action for failure to prosecute pursuant to Fed. R. Civ. P. 41(b).

Despite notification of the right to object to the R&R, no objections were filed. When no objection is made, the Court subjects the R&R to a clear error review. Arthur v. Goord, No. 06 Civ. 326 (DLC), 2008 WL 482866, at *3 (S.D.N.Y. Feb. 21, 2008) ("To accept those portions of the report to which no timely objection has been made, 'a district court need only satisfy itself that there is no clear error on the face of the record.'" (quoting Figueroa v. Riverbay Corp., No. 06 Civ. 5364

COPIES MAILED

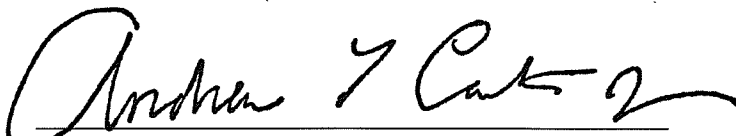
(PAC), 2006 WL 3804581, at *1 (S.D.N.Y. Dec. 22, 2006))). The Court's review finds no clear error.

Nevertheless, after the R&R was issued, though he did not file any objections, Plaintiff Fernando Lopez began to participate in the prosecution of this case. (See Dkt. Nos. 75, 77.) As such, the Court will allow him to maintain this action.

In light of the foregoing, the Court **ADOPTS** Magistrate Judge Netburn's R&R with respect to Plaintiff Alston. The Court **DISMISSES** Chason Alston from this case **WITHOUT PREJUDICE** under Fed. R. Civ. P. 41(b).

SO ORDERED.

Dated: New York, New York
October 21, 2013



Andrew L. Carter, Jr.
United States District Judge